D.B. CIVIL WRIT PETITION NO. 2868/2004

Omprakash
Vs.
State of Raj. and Ors.

Date of Order :: 18.4.2007

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr. MR Singhvi, for the petitioner.
Mr. Vijay Bishnoi, for the respondent.

This petition is primarily directed against the order passed by the respondent-State exonerating respondent No.3 Sampat Lal Sethia while he was holding the post of Up-Sarpanch, Gram Panchayat, Udasar, Panchayat Samiti, Bikaner who was suspended from his office vide order dated 23.10.2001. The following charges were levelled against him for holding an enquiry into his conduct as Up-Sarpanch during his times of 1989.

The first charge levelled against the said Sarpanch was about seeking allotment of land of Panchayat in his own name, in the name of his sons, his wife and other relatives. In all ten pattas were issued in the name of the Sarpanch his sons, his wife and in his relatives.

The second charge was also in respect of securing the allotment of aforesaid ten pattas

by misrepresentation to the then Sarpanch and the members of concerned committee and securing their signatures by keeping them in dark about the fact and himself signing the blank and incomplete pattas.

The third charge was about issuing free health care card in favour of Kanwar Lal.

The suspension order dated 23.10.2001 was challenged by way of Writ Petition No. 4430/2001, which was dismissed by this Court on 23.11.2001. Appeal against which was preferred by the said respondent. It is stated by the learned counsel for said respondent Sampat Lal Sethia that since during the pendency of the appeal the impugned order in this writ petition revoking the suspension order was passed, that appeal was dismissed as having become infructuous.

Apparently, the first two charges levelled against respondent No.3 was about securing allotment of panchayat land in his favour as well as in favour of members of his family and other relatives surreptitiously and contrary to the rules.

While on the one hand the proceeding was initiated against the respondent No.3, all

aforesaid pattas issued in favour of the said respondent and the members of his family were cancelled by the Revisional Authority.

The cancellation of those pattas were made subject matter of separate writ petitions. The petition filed by Shri Sampat Raj Sethia was dismissed by the learned Single Judge of this Court on 10.5.2002. The learned Single Judge has recorded a finding sustaining the order of the revisional authority that "as things stand said Shri Sampat Raj Sethia was not eligible to be allotted the land as claimed by him. It was categorically found that it was by transgressing the authority of the rules. The allotment of the plot can be said to be dehors the rules. Since very entitlement of the petitioner in terms of Rules 266 of the Rules of 1961 is missing, the allotment is an infringement of Rule 266. Any such allotment would thus amount to misuse of powers malafide."

In this background, if the case of the petitioner is judged, then what stands out prominently is the fact that an illegal exercise of jurisdiction by the Panchayat was corrected by the revisional authority no doubt after a delay but what cannot be forgotten is the fact that petitioner is and was Up-Sarpanch of the

Gram Panchayat and had the capacity of influencing the treatment of case.

This order was subjected to appeal by the said respondent and the other patta holders whose pattas have been cancelled. All those appeals were dismissed by the Division Bench by passing a speaking order in D.B. Civil Special Appeal No. 457/2003 (Manoj Kumar Vs. State of Rajasthan and Ors.). In the said judgment, the Division Bench recorded its finding in unequivocal terms as under :-

> "The allotment of lands to the appellant, Sampat Lal and his relatives is a clear case of distribution of largesse by Gram Panchayat Udasar. The grant of virtual gift of plots to the appellant, Sampat Lal and his relatives smacks of favouritism at the cost of the community. Sampat Lal and Up-Sarpanch when allotments were made to him and his relatives. The plots were acquired by them by entering into private negotiation with the Gram Panchayat without putting the plots to auction in violation of Rule 266 of the Rules. It leaves no manner of doubt in our minds that action of the Panchayat was arbitrary ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... ... The distribution of bounty by the State or its functionary Panchayats cannot be countenanced."

Thus, the order of the learned Single Judge upholding the cancellation of patta to be in violation of rules for conferring illegal

benefit to the member of panchayat was upheld with an empathetical note about illegality of allotment and ineligibility of the allottees and misuse of their office.

Apparently, these findings have direct bearing on the validity and illegality of the allotment made in favour of Sampat Lal Sethia and his relatives which was gravamen of charge No.1 and 2 in respect of which enquiry was directed to be held by the State Government under the provisions of the Rajasthan Panchayati Raj Act, 1994. After all those happened, by order dated 16.2.2004, the Government has found charge No.1 and 2 against said Sampat Lal Sethia to be not proved vide Annexure-9 which is subject matter of challenge. Apparently, this litigation is directed to keep spirit of public interest clean from vice of its abuse.

Strangely enough notwithstanding that this Court in successive judgments by the learned Single Judge and Division Bench had affirmatively and empathetically found the allotment of plots in favour of Sampat Raj Sethia and his relatives to be an abuse of office resulting in conferment of illegal grant to the detriment of public interest and surreptitiously and in illegal manner and the enquiry officer has found those

charges proved, yet the State Government without referring to the decisions of the Court to which Sampat Raj Sethia as well as the State Government were parties and without referring the reasons prevailing with the enquiry officer, finding the charges proved, gave a clean chit without even recording a finding contrary to all the aforesaid material that the land was ancestral land of said Sampat Raj Sethia. Thus, nullifying the effect of cancellation of order by revisional authority finding allotment to be invalid and the order of this Court upholding the order of the revisional authority that such allotment was illegal. So much so the finding that the land in question was ancestral land of Sampat Raj Sethia is contrary to the conduct of Sampat Raj Sethia in seeking allotment for himself and in favour of members of his family. If the land in question was ancestral property as found by the respondent while exonerating said Sampat Raj Sethia, there was no question of seeking allotment in his favour or in favour of near relatives by making applications. Thus, the adjudicating authority has made out a case not even set-up by the delinquent holder of public office.

This clearly goes to show that the respondents were out and out to confer a benefit on said Sampat Raj Sethia to the detriment of

public interest by giving a clean chit by ignoring the finding recorded on issues, which were adjudicated upon by this Court. Thus, the illegality of allotment made in favour of said respondent makes out a clear case of the State Government trying to bail out Sampat Raj Sethia from difficult position notwithstanding the findings recorded by this Court. This action was clearly to nullify the judgment of this Court in a blazon manner. Apparently, this cannot be countenanced.

Learned counsel for the respondent tried to defend the impugned order Annexure-9 dated 16.2.2004 on the ground that Shri Vikram Singh, who was Sarpanch at the time when Sampat Raj Sethia was suspended was also being subjected to suspension and his suspension order also being revoked but no case is filed against him by the petitioner.

Notwithstanding, levying these allegations, no material has been placed before us about the involvement of said Shri Vikram Singh in making allotment to Sampat Raj Sethia, which was subject matter of enquiry in question. As a matter of fact, it is admitted that when the allotment was made in favour of Sampat Raj Sethiya and his relatives said Shri Vikram Singh was not a member

of Panchayat. Since the facts about Shri Vikram Singh are not before us for making observations, in these circumstances, we do not make any observations about Shri Vikram Singh's case, however, the order Annexure-9 dated 16.2.2004 cannot be allowed to stand in the circumstances noticed by us above.

The writ petition is allowed with costs. The order dated 16.2.2004 Annexure-9 is quashed. The respondents are directed to complete enquiry in accordance with law by keeping away the officer, who has made the order dated 16.2.2004 for conducting the enquiry. Fresh orders be passed after taking into consideration the enquiry report submitted by the enquiry officer, keeping in view the findings recorded by the High Court and other relevant circumstances that may be before the enquiry officer.

Before parting with the case we may notice that so far as restoration of suspension order is concerned, suffice it to say that life of the Panchayat in which said Sampat Raj Sethia was holding the post of Up-Sarpanch, has expired and said Sampat Raj Sethia was no more a member of that Panchayat. Therefore, restoration of suspension order cannot be granted.

Cost will be borne by respondent No.3 which is quantified as Rs.5,000/-, and it shall be paid to State Legal Services Authority.

(BHANWAROO KHAN),J. (RAJESH BALIA),J.

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